Qatrun Nada bt Mohd Latfi v Ketua Pengarah Jabatan Agama Islam W Persekutuan Labuan & Anor

HIGH COURT (LABUAN) — CASE NO LBN-13JR–1/1 OF 2013
RAVINTHRAN J
9 JULY 2013

Labour Law — Employment — Dismissal — Teacher dismissed from employment due to association with opposition political party — Letter of termination did not reveal reasons of termination — Whether employer required to give reasons — Whether decision tainted by unreasonable and irrationality because no reasons were furnished — Whether employer acted fairly — Whether employee had legitimate expectation to be consulted and given reasons before termination of appointment — Natural justice — Whether decision constitutional — Federal Constitution arts 5(1) & 8(1)

The applicant was a religious studies teacher employed by the second respondent which was a Federal Government department while the first respondent was the Director General of the second respondent. The applicant's appointment was purportedly terminated by the second respondent with one month's notice but the letter of termination did not reveal any reasons of termination. The applicant submitted that she was not terminated but instead was dismissed as she was accused of being involved in activities of an opposition political party after a session of questioning in the principal's office. The applicant further submitted that the decision of the first respondent to dismiss her was tainted by extraneous consideration and was mala fide. Hence, in the present application for judicial review, the applicant argued that the decision was tainted by unreasonable and irrationality because no reasons were furnished for the dismissal; the respondents did not act fairly; the applicant had a legitimate expectation to be consulted and given reasons before the termination of her appointment and was therefore denied of natural justice; and that the decision was unconstitutional as it contravened arts 5(1) and 8(1) of the Federal Constitution. In reply, the respondents contended that the applicant was only a temporary staff whose services could be terminated with one month's notice. Further, the letter of offer stipulated that the second respondent need not assign any reasons for termination and that the decision of the second respondent was a management prerogative which was not justiciable.

Held, dismissing the application with costs of RM2,000:

(1) The applicant was employed pursuant to a letter of offer that stated she

was being employed as temporary teacher whose services could be terminated at any time with one month's notice and with no reasons given. The argument that the termination letter did not furnish any reasons and therefore, the applicant was not terminated on ground of exigency of service was fallacious. Even if there was duty to give reasons, the applicant could rely on the clause 'Conditions of Service' in the letter of offer, only if she was terminated without notice. Here, the applicant had been given more than a month's notice and the notice was consistent with the letter of offer given to her prior to her appointment (see paras 7–8).

(2) The applicant's relationship with the second defendant was purely contractual. The contract between the applicant and the second respondent did not provide for a domestic inquiry in the event either party elected to terminate the contract with one month's notice. The question of granting the applicant a hearing in accordance with the principles of natural justice did not arise (see para 10).

(3) The argument that the applicant had legitimate expectation to continue working was without merit as there was no evidence to support the argument. The clear terms of the contract militate against the conclusion that the applicant could continue to work unhindered until her contract expired or be confirmed on the permanent establishment. The letter of offer and 'Condition of Service' clearly stated that the appointment was temporary and could be terminated at any time (see paras 12–13).

(4) It is trite law that the motive of the employed would not be relevant in cases where an employee had been properly terminated in accordance with the contract of employment as opposed to cases where the employee had been dismissed (see para 14).

[Bahasa Malaysia summary

Pemohon adalah guru pengajian agama yang diambil bekerja oleh responden kedua yang merupakah jabatan Kerajaan Persekutuan sementara responden pertama adalah Ketua Pengarah responden kedua. Pelantikan pemohon ditamatkan oleh responden kedua dengan notis satu bulan tetapi surat penamatan tidak menunjukkan apa-apa sebab-sebab penamatan. Pemohon berhujah bahawa dia tidak ditamatkan perkhidmatan tetapi sebaliknya dibuang kerja kerana dia dituduh terlibat dalam aktiviti-aktiviti parti politik pembangkang selepas sesi soal siasat di pejabat pengetua. Pemohon selanjutnya berhujah bahawa keputusan responden pertama untuk membuang kerjanya dicela oleh pertimbangan luaran dan adalah mala fide. Maka, dalam permohonan ini untuk semakan kehakiman, pemohon berhujah bahawa keputusan tersebut dicela dengan ketakmunasabahan dan tidak rasional kerana tiada sebab-sebab dikemukakan untuk pembuangan kerja; responden tidak bertindak secara adil; pemohon mempunyai harapan yang sah untuk dibawa

berbincang dan diberi sebab sebelum penamatan perlantikannya dan oleh itu dinafikan dengan keadilan asasi; dan bahawa keputusan tersebut tidak berperlembagaan kerana ia melanggar perkara 5(1) dan 8(1) Perlembagaan Persekutuan. Dalam menjawab, responden-responden berhujah bahawa pemohon hanya seorang pekerja sementara yang perkhidmatannya boleh diberhentikan dengan satu bulan notis. Selanjutnya, surat tawaran menyatakan responden kedua tidak perlu memberikan apa-apa sebab untuk penamatan perkhidmatan dan bahawa keputusan responden kedua aadalah prerogatif pengurusan yang mana tidak boleh diadili.

Diputuskan, menolak permohonan dengan kos sebanyak RM2,000:

(1) Pemohon diambil bekerja berikutan surat tawaran yang menyatakan yang dia diambil bekerja sebagai guru sementara yang khidmatnya boleh ditamatkan pada bila-bila masa dengan satu bulan notis dan tanpa sebab diberikan. Penghujahan bahawa surat penamatan pekerjaan tidak mengemukakan apa-apa sebab dan oleh itu, pemohon tidak ditamatkan perkhidmatan atas alasan of 'exigency of service was fallacious'. Walaupun jika terdapat duti untuk memberi sebab, pemohon boleh bergantung ke atas klausa 'Conditions of Service' di dalam surat tawaran, jika hanya dia dibuang kerja tanpa notis. Di sini, pemohon telah diberi lebih daripada satu bulan notis dan notis adalah konsisten dengan surat tawaran yang diberikan kepadanya sebelum perlantikannya (lihat perenggan 7–8).

(2) Hubungan pemohon dengan defendan kedua adalah semata-mata kontrak. Kontrak di antara pemohon dan responden kedua tidak memperuntukkan untuk siasatan domestik jika salah satu pihak memilih untuk menamatkan kontrak dengan satu bulan notis. Persoalan memberikan pemohon pendengaran berikutan prinsip keadilan asasi tidak berbangkit (lihat perenggan 10).

(3) Penghujahan bahawa pemohon mempunyai harapan sah untuk terus bekerja adalah tanpa merit memandangkan tidak terdapat keterangan untuk menyokong penghujahan tersebut. Terma-terma kontrak yang jelas membantah terhadap keputusan bahawa pemohon boleh terus bekerja tanpa halangan sehingga kontraknya tamat atau disahkan atas penjawatan tetap. Surat tawaran dan 'Condition of Service' jelas menyatakan bahawa perlantikan adalah sementara dan boleh ditamatkan pada bila-bila masa (lihat perenggan 12–13).

(4) Adalah undang-undang tetap bahawa motif orang yang diambil bekerja tidak relevan dalam kes-kes di mana seorang pekerja telah dimatkan perkhidmatan secara betul mengikut kontrak pekerjaan bertentangan dengan kes-kes di mana pekerja telah dibuang kerja (lihat perenggan 14).]

Notes

For cases on dismissal, see 8(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 1078–1149.

Cases referred to

B Surinder Singh Kanda v The Government of the Federation of Malaya [1962] 1 MLJ 169, PC (distd)

Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeal [1996] 1 MLJ 481, CA (not folld)

Quek Chek Yen v Majlis Daerah Kulai [1986] 2 MLJ 290, SC (refd)

Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors [1995] 1 MLJ 308, CA (distd)

Rohana bte Ariffin & Anor v Universiti Sains Malaysia [1989] 1 MLJ 487, HC (not folld)

Shamsiah bte Ahmad Sham v Public Services Commission, Malaysia & Anor [1990] 3 MLJ 364, SC (distd)

Woon Kwok Cheng v HR Hochstadt & Ors [1997] 2 MLJ 795, HC (refd)

Zakiah bte Ishak v Majlis Daerah Hulu Selangor Darul Ehsan [2005] 6 MLJ 517, CA (folld)

Legislation referred to

Federal Constitution arts 5(1), 8(1), 132
Industrial Relations Act 1967 s 20

Mohd Hanifa Mydin (Mohd & Associates) for the plaintiff.
Rahazlan (Federal Counsel, Attorney General's Chambers) for the defendant.

Ravinthran J:

[1] This is an application for judicial review. Leave had been granted on the basis that the application was not frivolous or vexatious and that the applicant had disclosed an arguable case.

BRIEF FACTS

[2] The brief facts are as follows. The applicant is religious studies teacher employed by the second respondent who is a federal government department. The first respondent is the director general of the second respondent. The applicant commenced employment as temporary contract teacher pursuant to letter of appointment dated 8 February 2011. Her appointment was purportedly terminated by the second respondent with one month's notice. The termination letter dated 23 October 2012 did not give any reasons why

the services of the applicant were no longer required. The applicant is now praying for the following reliefs:

(a) a declaration that the decision of the respondent pursuant to a letter to the applicant dated 23 October 2012 terminating the service of the applicant as a teacher enforceable from 1 December 2012 was invalid and/or of no effect;

(b) an order of certiorari to remove into the court and quash the said decision;

(c) an order of mandamus compelling the respondent to reinstate the applicant as a teacher;

(d) a declaration that the said decision was void or alternatively be wrongful and in breach of the conditions of service/contract of service; and

(e) an order directing the respondent to pay the applicant all her backwages and salaries.

THE APPLICANT'S CASE

[3] The applicant's case is that she was not terminated but was dismissed because she was involved in activities of an opposition political party. She stated in her affidavit that she was accused by an UMNO leader (Datuk Yunus bin Kurus) of being involved in the activities of an opposition party. She was questioned as to her involvement in the said opposition party in the principal's office and subsequently her appointment as a temporary teacher was terminated. Thus, counsel for applicant submitted that the decision of the first respondent to dismiss her was tainted by extraneous considerations and was mala fide.

GROUNDS OF APPLICATION

[4] The argument of the applicant can be summarised as follows:

(a) the decision was tainted by unreasonable and irrationality because no reasons were furnished for the dismissal. Furthermore, the termination was not based on exigency of service. Counsel for applicant cited the cases of *Rohana bte Ariffin & Anor v Universiti Sains Malaysia* [1989] 1 MLJ 487, *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeal* [1996] 1 MLJ 481;

(b) the respondents did not act fairly. Counsel for applicant submitted that it was not stated in the letter that the applicant's service was terminated because of exigency of service. It was also argued that reasons must be given even if the employment was temporary. Since no reasons were given, counsel for applicant urged the court to hold that she was terminated because of the dictation of a third party, ie UMNO;

(c) the applicant had a legitimate expectation to be consulted and given reasons before her appointment was terminated. In the premises, the applicant was denied natural justice. In support, counsel for applicant cited the cases of *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 308, *B Surinder Singh Kanda v The Government of the Federation of Malaya* [1962] 1 MLJ 169, *Shamsiah bte Ahmad Sham v Public Services Commission, Malaysia & Anor* [1990] 3 MLJ 364 and *Woon Kwok Cheng v HR Hochstadt & Ors* [1997] 2 MLJ 795; and

(d) the decision was unconstitutional as it contravened arts 5(1) and 8(1) of the Federal Constitution.

REPLY OF THE RESPONDENTS

[5] The senior federal counsel on behalf of the respondent replied that the applicant was only a temporary staff whose service could be terminated with one month's notice. The letter of offer says that the second respondent need not assign any reason for termination. In the premises, the decision of the second respondent to terminate the service of the applicant was a management prerogative which is not justiciable.

DECISION

[6] After having considered the substantive arguments in this case, my decision is that the judicial review application should be dismissed. My reasons are as follows.

[7] The applicant in this case was employed pursuant to a letter of offer that stated she was being employed as temporary teacher whose service can be terminated at any time with one month's notice and with no reasons given. Counsel for applicant argued that the 'Syarat-Syarat Perlantikan Guru' or 'Conditions of Service' stated that the applicant can only terminated on ground of 'exigency of service' (Kepentingan perkhidmatan). The argument is that the termination letter did not furnish any reasons and therefore she was not terminated on ground of exigency of service. In my view, this argument is

fallacious for the following reasons. The relevant clause of the 'Conditions of Service' reads as follows in the national language:

> Tuan/Puan boleh diberhentikan bila bila masa dari jawatan tanpa memberi sebarang notice dengan mengambil kira kepentingan perkhidmatan.

[8] The said clause says that a temporary teacher can be terminated without any notice on ground of exigency of service. In my view, even if there was duty to give reasons, the applicant can rely on this clause only if she was terminated without any notice. In the instant case, the letter of termination is dated 23 October 2012. The letter stated that the service of the applicant is terminated with effect from 1 December 2012. Therefore, the applicant had been given more than a month's notice of the termination of her service as a temporary teacher. The notice given to her is consistent with the letter of offer given to her prior to her appointment. The letter of offer states as follows in respect of termination:

> Pihak Jabatan ini boleh menamatkan perkhidmatan tuan/puan pada bila bila masa sahaja dengan memberi sebulan notis tanpa memberi apa apa sebab.
>
> (English translation: The Department can terminate your service at any time with a month's notice without giving any reason)

[9] In the premises, the argument that there was a duty to give reasons because of the reference to 'exigency of service' in the 'Conditions of Employment' has no merit as the applicant was terminated with one month notice in accordance with the letter of offer. For this reason, the cases cited by the counsel for applicant, ie *Rohana bte Ariffin & Anor v Universiti Sains Malaysia* and *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeal* are not applicable. *Rohana*'s case was in respect of the manner the disciplinary authority conducted the disciplinary proceedings against the applicant. *Hong Leong Equipment Sdn Bhd*'s case was about the reviewability of the Minister's decision under s 20 of the Industrial Relations Act 1967 to refer a dispute to the Industrial Court. In the instant case, the contract between the applicant and the second respondent did not provide for a domestic inquiry in the event either party elected to terminate the contract with one month's notice. Therefore the question of granting the applicant a hearing in accordance with the principles of natural justice did not arise. The cases of *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polls & Ors*, *B Surinder Singh Kanda v The Government of the Federation of Malaya*, *Shamsiah bte Ahmad Shah v Public Services Commission, Malaysia & Anor* can easily be distinguished. In all those cases, the applicants were public servants within the meaning of art 132 of the Federal Constitution with all the concomitant rights and privileges. Therefore the court in all the above cases thoroughly scrutinised the fairness of the disciplinary proceedings. In the

instant case, the applicant's position as a temporary teacher is not clothed with the status of public servant, or in other words she does not have status 'supported by statute'. The letter of offer and the 'Conditions of Service' clearly state the following:

(a) the applicant cannot be considered as an officer in the public service;

(b) the applicant is not entitled to any of the prerogatives of a public servant;

(c) the applicant's service may be terminated at any time in the interest of service with one month notice without giving any reason; and

(d) the respondents were not bound to give any permanent post to the applicant.

[10] In the premises, the applicant's relationship with the second defendant is purely contractual. Her appointment, although she is employed by a government body, can be terminated in accordance with the terms of her employment. In *Zakiah bte Ishak v Majlis Daerah Hulu Selangor Darul Ehsan* [2005] 6 MLJ 517, the applicant was hired by a local authority on a contract basis for a period of one year with the provision that either party may terminate the contract with one month's notice. However, following allegation of misconduct, her appointment was terminated with one month's notice. It was held by the Federal Court that the applicant was not dismissed but that her appointment was terminated in accordance with the contract and therefore she need not be accorded a right of hearing. Arifin Zakaria FCJ (as he then was) said as follows:

> From the facts presented, it is clear that the appellant was offered the post on a one year contract subject to the right of either party to terminate the same by giving the other the requisite notice or in lieu thereof one month's salary. The appellant accepted the offer on those terms. She cannot now complain. The premise upon which the respondent decided to terminate her contract is strictly a matter for the respondent. It is not open to the appellant to question the motive of the respondent. In this case it is clear that the appellant's service with the respondent was terminated; she was not dismissed as contended by learned counsel for the appellant. Therefore, she need not be given a right of hearing to exculpate herself.

[11] As the facts of the instant case are no different from that of the above case, in my view, the applicant has no right to be given a hearing.

[12] The argument that the applicant had legitimate expectation to continue working is also without any merit. In the above mentioned case of *Zakiah bte Ishak v Majlis Daerah Hulu Selangor Darul Ehsan*, Arifin Zakaria FCJ addressed the legitimate expectation issue in the following words:

> Secondly it was contended on her behalf that the termination was in breach of her legitimate expectation that she could continue in her employment for the said period. In law for legitimate expectation to arise there must be evidence of a promise or undertaking made by the respondent to that effect. We find no such evidence before the court. On that premise we find that her claim for breach of legitimate expectation is wholly unsustainable.

[13] In the instant case, the clear terms of the contract militate against the conclusion that the applicant could continue to work unhindered until her contract expired or be confirmed on the permanent establishment. The letter of offer and 'Conditions of Service' clearly said that the appointment is 'temporary' and can be terminated at any time. There is no affidavit evidence from the applicant that referred to any undertaking or promise from her employer that altered the temporary nature of her employment. In the premises, there is no evidence to support the legitimate expectation argument. The authorities submitted on this point by counsel for applicant are not relevant as they concern public servants.

[14] The final point that I would address is whether the respondents were actuated by mala fide in view of the allegation that there was political interference in the termination of the service of the applicant. I find that it is trite law that the motive of the employer is not relevant in cases where an employee is properly terminated in accordance with the contract of employment as opposed to cases where the employee is dismissed. In *Quek Chek Yen v Majlis Daerah Kulai* [1986] 2 MLJ 290, Hashim Yeop A Sani SCJ at the Supreme Court said as follows in response to the argument that the local authority acted with mala fide in dismissing a contractual employee:

> In any case a short answer to this complaint is to be found in a passage in the judgment of Chagla CJ in *Shrinivas Ganesh v Union of India* AIR 1956 Bom 455:
>
> We do not understand how an employee is entitled to question the motives of his employer if the employer has the right to dispense with his services at any time.
>
> Whatever may be the motive which may influence the exercise of a legal right, if the legal right exists, then the motive becomes irrelevant …

[15] For all the above reasons, the judicial review application is dismissed with costs of RM2,000.

Application dismissed with costs of RM2,000.

Reported by Afiq Mohamad Noor